

LC 585  
2019 Regular Session  
16500-002  
9/13/18 (DFY/ps)

# D R A F T

## SUMMARY

Provides that information furnished to Secretary of State in connection with audit or regarding waste, inefficiency or abuse in state government is confidential.

Prohibits disclosure of such confidential information, with certain exceptions. Punishes by maximum of 30 days' imprisonment, \$1,250 fine, or both.

Authorizes Secretary of State to withhold certain information from disclosure. Sets forth procedure for appeal of determination to withhold information from disclosure.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to confidentiality of information furnished by whistleblowers; cre-  
3 ating new provisions; amending ORS 177.180 and 192.431; and prescribing  
4 an effective date.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. (1) The Legislative Assembly finds that:**

7 **(a) Whistleblowers who furnish information to state government**  
8 **auditors may be at risk of social, economic or physical retaliation if**  
9 **their identities or certain pieces of information they furnished are re-**  
10 **vealed;**

11 **(b) In order to increase transparency and accountability in state**  
12 **government, information furnished by whistleblowers should be kept**  
13 **confidential upon request in order to encourage whistleblowers to**  
14 **share information with auditors voluntarily; and**

15 **(c) The public interest is served by a commitment by the Secretary**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 of State to protect the identity of whistleblowers, including protecting  
2 the confidentiality of information furnished by whistleblowers.

3 (2) Information furnished to the Secretary of State in connection  
4 with a completed, ongoing or potential audit, or regarding waste, in-  
5 efficiency or abuse by state agencies, state employees or persons under  
6 contract with state agencies, is deemed confidential if the person who  
7 furnished the information requests that it be deemed confidential. In-  
8 formation deemed confidential under this subsection includes the  
9 identity of the person who furnished the information.

10 (3) A person may not disclose information deemed confidential un-  
11 der subsection (2) of this section or use the information for any pur-  
12 pose except performing audits conducted pursuant to standards  
13 established by the United States Government Accountability Office or  
14 performing an investigation under ORS 177.170 and 177.180, except:

15 (a) In response to a public records request, if the Director of the  
16 Division of Audits determines that disclosure is not likely to reveal the  
17 identity of the person who furnished the information, or as provided  
18 in subsection (4) of this section;

19 (b) As provided in ORS 177.180 (3) or (5);

20 (c) If the director determines that disclosure is necessary in order  
21 to perform a full and thorough audit or investigation or prepare a full  
22 and thorough report;

23 (d) For review by the Attorney General in connection with a peti-  
24 tion under ORS 192.411; or

25 (e) As ordered by a court of competent jurisdiction.

26 (4)(a) If the director determines that disclosure of specific records  
27 containing information deemed confidential under subsection (2) of  
28 this section is likely to reveal the identity of the person who furnished  
29 the information, the director may apply to the Secretary of State as  
30 described in this subsection to withhold the records from disclosure.

31 (b) A request by the director to withhold records from disclosure

1 **must be made in writing in a manner that does not reveal the identity**  
2 **of the person who furnished the confidential information.**

3 **(c) If the Secretary of State approves the director's request in**  
4 **writing, the information continues to be deemed confidential. The**  
5 **request and the approval by the Secretary of State shall be disclosed**  
6 **as public records upon request.**

7 **(d) If the Secretary of State does not approve the director's request**  
8 **in writing within 30 days after receipt of the request, the information**  
9 **is no longer deemed confidential.**

10 **(e) A person aggrieved by the Secretary of State's approval of a**  
11 **request to withhold records under this subsection may petition the**  
12 **Attorney General under ORS 192.411. However, if the records relate to**  
13 **the office of the Attorney General, the Secretary of State shall desig-**  
14 **nate a district attorney to carry out the duties of the Attorney General**  
15 **under ORS 192.411 with respect to the records. If no district attorney**  
16 **agrees to carry out the duties, the person may file suit in the circuit**  
17 **court for Marion County. The provisions of ORS 192.431 apply to such**  
18 **a suit.**

19 **(5) Violation of subsection (3) of this section is a Class C**  
20 **misdemeanor. An officer or employee of the State of Oregon who vio-**  
21 **lates subsection (3) of this section shall be dismissed from office and**  
22 **may not hold any public office with the State of Oregon for a period**  
23 **of one year from the date of dismissal.**

24 **(6) As used in this section, "disclose" means to release information**  
25 **to persons other than:**

26 **(a) The Secretary of State;**

27 **(b) Persons under the control or supervision of the Secretary of**  
28 **State; or**

29 **(c) The person who furnished the information to the office of the**  
30 **Secretary of State.**

31 **SECTION 2. ORS 192.431 is amended to read:**

1 192.431. (1) In any suit filed under ORS 192.401, 192.411, 192.415, 192.422  
2 or 192.427 **or section 1 of this 2019 Act**, the court has jurisdiction to enjoin  
3 the public body from withholding records and to order the production of any  
4 records improperly withheld from the person seeking disclosure. The court  
5 shall determine the matter de novo and the burden is on the public body to  
6 sustain its action. The court, on its own motion, may view the documents in  
7 controversy in camera before reaching a decision. Any noncompliance with  
8 the order of the court may be punished as contempt of court.

9 (2) Except as to causes the court considers of greater importance, pro-  
10 ceedings arising under ORS 192.401, 192.411, 192.415, 192.422 or 192.427 **or**  
11 **section 1 of this 2019 Act** take precedence on the docket over all other  
12 causes and shall be assigned for hearing and trial at the earliest practicable  
13 date and expedited in every way.

14 (3) If a person seeking the right to inspect or to receive a copy of a public  
15 record prevails in the suit, the person shall be awarded costs and disburse-  
16 ments and reasonable attorney fees at trial and on appeal. If the person  
17 prevails in part, the court may in its discretion award the person costs and  
18 disbursements and reasonable attorney fees at trial and on appeal, or an  
19 appropriate portion thereof. If the state agency failed to comply with the  
20 Attorney General's order in full and did not issue a notice of intention to  
21 institute proceedings pursuant to ORS 192.411 (2) within seven days after  
22 issuance of the order, or did not institute the proceedings within seven days  
23 after issuance of the notice, the petitioner shall be awarded costs of suit at  
24 the trial level and reasonable attorney fees regardless of which party insti-  
25 tuted the suit and regardless of which party prevailed therein.

26 **SECTION 3.** ORS 177.180 is amended to read:

27 177.180. (1) The Secretary of State shall designate one person employed  
28 by the Division of Audits of the Office of the Secretary of State to be re-  
29 sponsible for reports of waste, inefficiency or abuse received through the  
30 Government Waste Hotline or received by the secretary through any other  
31 method. The person designated under this section shall log all reports re-

1 ceived.

2 [(2) *Except as provided in subsection (3) or (5) of this section, the identity*  
3 *of any person calling the Government Waste Hotline or otherwise making a*  
4 *report under ORS 177.170 is confidential. A person making a report under*  
5 *ORS 177.170 may waive the confidentiality otherwise granted under this sub-*  
6 *section.*]

7 **(2) The confidentiality provisions of section 1 of this 2019 Act apply**  
8 **to information furnished by any person calling the Government Waste**  
9 **Hotline or otherwise making a report under ORS 177.170.**

10 (3) The secretary shall conduct an initial investigation of each report of  
11 waste, inefficiency or abuse made under ORS 177.170. Following the initial  
12 investigation, the secretary shall determine which reports shall be investi-  
13 gated further and assign the investigation to audit staff qualified to conduct  
14 waste, inefficiency and abuse investigations. The secretary may audit any  
15 state agency if it appears that officers or employees of the agency, or persons  
16 under contract with the agency, are engaging in activities that constitute  
17 waste, inefficiency or abuse. Notwithstanding [*subsection (2) of this section*]  
18 **section 1 of this 2019 Act:**

19 (a) If the secretary determines during the investigation that a violation  
20 of any provision of ORS chapter 244 may be occurring or may have occurred,  
21 the secretary shall notify the Oregon Government Ethics Commission of the  
22 potential violation; and

23 (b) If the secretary determines during the investigation that fraud or  
24 other criminal activity may be occurring or may have occurred, the secretary  
25 shall notify the appropriate law enforcement agency of the potential fraud  
26 or other criminal activity.

27 (4) Except as provided in subsection (3) or (5) of this section, an investi-  
28 gation of a report of waste, inefficiency or abuse received under ORS 177.170  
29 is confidential unless the secretary finds that waste, inefficiency or abuse  
30 has occurred and reports these determinations as provided under subsection  
31 (6) of this section or determines not to investigate following an initial in-

1 vestigation under subsection (3) of this section. If the secretary finds that  
2 waste, inefficiency or abuse has occurred, the investigation and any deter-  
3 minations made are confidential until the investigation described in sub-  
4 section (3) of this section is complete. A determination by the secretary not  
5 to investigate following an initial investigation constitutes completion of the  
6 investigation.

7 (5) Notwithstanding **section 1 of this 2019 Act** [subsections (2)] and  
8 **subsection** (4) of this section, the secretary may convey the contents of a  
9 report of waste, inefficiency or abuse made under ORS 177.170 to a public  
10 body, as defined in ORS 174.109, [unless] **if** the person making the report  
11 under ORS 177.170 [objects] **consents** to disclosure of the report to the public  
12 body.

13 (6) Subject to [the confidentiality requirements of subsection (2) of this  
14 section] **section 1 of this 2019 Act**, upon completion of an investigation  
15 under this section:

16 (a) The secretary shall determine in writing whether officers or employees  
17 of a state agency, or persons under contract with a state agency, are en-  
18 gaging in activities that constitute waste, inefficiency or abuse. The written  
19 determination may include other information about the nature of the inves-  
20 tigation or the secretary's determination.

21 (b) If the secretary finds that waste, inefficiency or abuse has occurred,  
22 upon request of the person who made the report under ORS 177.170, the  
23 secretary shall provide the person with a copy of the determination and any  
24 other information included by the secretary.

25 (c) If the secretary determines that officers or employees of another state  
26 agency or public body, or persons under contract with a state agency or  
27 public body, are involved in activities that constitute waste, inefficiency or  
28 abuse, the secretary shall notify the state agency or public body of the de-  
29 termination and deliver a copy of the secretary's findings to the agency or  
30 body.

31 (7) A written determination prepared by the secretary under this section

1 is a public record. Following the completion of an investigation, or a deter-  
2 mination not to investigate beyond an initial investigation, all documents,  
3 information or other records relating to the investigation are disclosable  
4 public records under ORS 192.311 to 192.478 unless an exemption from dis-  
5 closure set forth in a provision of law other than this section applies to the  
6 records, [*except that the identity of the person making the report under ORS*  
7 *177.170 shall remain confidential*] **and subject to section 1 of this 2019**  
8 **Act.**

9 (8) The secretary shall prepare an annual report and submit it to each  
10 regular session of the Legislative Assembly. The report shall describe the  
11 number, nature and resolution of reports made under ORS 177.170 and shall  
12 identify savings resulting from improved efficiencies or the elimination of  
13 waste or abuse resulting from reports received and investigations conducted  
14 under this section and ORS 177.170. The report shall also list the number and  
15 nature of any positive reports received relating to state agencies, state em-  
16 ployees or persons under contract with state agencies.

17 **SECTION 4. Section 1 of this 2019 Act and the amendments to ORS**  
18 **177.180 and 192.431 by sections 2 and 3 of this 2019 Act apply to infor-**  
19 **mation furnished on or after the effective date of this 2019 Act.**

20 **SECTION 5. This 2019 Act takes effect on the 91st day after the date**  
21 **on which the 2019 regular session of the Eightieth Legislative Assem-**  
22 **bly adjourns sine die.**

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